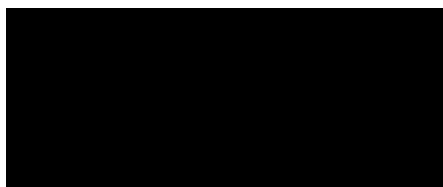


Jan 14, 2016

Office of Appeal Hearings
Dept. of Children and Families

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS



APPEAL NO. 15F-09325

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 15 Palm Beach
UNIT: AHCA

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above matter on January 5, 2016 at 1:04 p.m.

APPEARANCES

For the Petitioner:



Petitioner's Husband

For the Respondent:

Doretha Rouse
Registered Nurse Specialist

ISSUE

Whether respondent's denial of petitioner's request for the following services through the Statewide Long Term Managed Care Program (LTMC Program) was proper:

- 31.5 hours per week of additional personal care services
- 25.0 hours per week of additional respite services
- 2.0 hours per week of homemaker services
- 24.5 hours per week of companion services

The burden of proof for each service was assigned to the petitioner.

PRELIMINARY STATEMENT

Petitioner was not present. The representative provided a Durable Power of Attorney appointing him as petitioner's attorney-in-fact. The document was admitted as petitioner's exhibit "1".

Ms. Rouse appeared as both a representative and witness for the respondent. Present from Humana/American Eldercare were: Mindy Aikman, Grievance and Appeals Specialist; Etzer Thomas, Clinical Front Line Leader; Stacey Larsen, Clinical Guidance Analyst; Soundedy Amedee, Care Manager; and Dr. Teresita Hernandez, Medical Director. Respondent's exhibits "1" and "2" were entered into evidence. Administrative notice was taken of the Florida Medicaid Provider General Handbook.

The record was held open through January 12, 2016 for respondent to provide contract service definitions; an assessment; and a Plan of Care. Information was timely received and entered as respondent's exhibit "3". Petitioner did not wish to provide a written response to the post hearing submissions.

FINDINGS OF FACT

Based upon the oral and documentary evidence presented at the final hearing and on the entire proceeding, the following Findings of Fact are made:

1. Petitioner is 79 years of age and resides with her husband.
2. At all times relevant to this proceeding, petitioner was Medicaid eligible.

3. Respondent administers Florida's Medicaid Program and contracts with Health Maintenance Organizations (HMOs) to provide comprehensive, cost-effective medical services to Medicaid recipients in the LTMC Program.
4. Respondent does not have a promulgated Coverage and Limitations Handbook for the LTMC Program. LTMC services descriptions are defined by contract.
5. Effective November 1, 2015 Petitioner's LTMC services have been provided by Humana/American Eldercare. Prior to that date, petitioner was not eligible for the LTMC Program.
6. Upon becoming eligible for the LTMC Program, Humana/American Eldercare conducted an assessment. The purpose was to determine medically necessary services.
7. Based on petitioner's assessment, the following Finding of Facts are made:
 - Diagnosed with early [REDACTED]
 - Assistance is required with bathing and dressing
 - No assistance need with eating
 - Incontinent of bladder
 - Frequent incontinence of bowel
 - Easily confused
 - Recent back surgery resulted in paralysis in the lower extremities
 - Uses a wheelchair
8. Humana/American Eldercare determined 9 hours per week of personal care services (PCS) and 36 hours per week of respite were medically necessary.
9. PCS and respite services are provided from 11: 00 a.m. to 8:00 p.m.; Monday through Friday.
10. Petitioner thereafter requested the following services:
 - 31.5 hours of PCS
 - 25 hours per week of additional respite services

- 2 hours per week of homemaker services
- 24.5 hours per week of companion services

11. Dr. Hernandez reviewed petitioner's request. The following Notices of Action were issued:

Service:	Notice Date:	Decision:	Rationale:
PCS	October 22, 2015	Denied	9 hours of PCS and 36 hours of respite meets petitioner's need. Not medically necessary.
Respite	October 30, 2015	Denied	36 hours of respite and 9 hours of PCS meets petitioner's need. Not medically necessary.
Homemaker	October 22, 2015	Denied	36 hours of respite and 9 hours of PCS meets petitioner's need. Not medically necessary.
Companion	October 22, 2015	Denied	36 hours of respite and 9 hours of PCS meets petitioner's need. Not medically necessary.

12. On November 6, 2015 petitioner's representative contacted the Office of Appeal Hearings and requested a fair hearing.

13. Petitioner's husband is 85 years of age. He was recently hospitalized for [REDACTED]. A family member provides some assistance on the weekends. He currently self-pays for an additional five hours per week of in-home assistance.

14. Petitioner's representative argues 24 hour care is necessary.

15. Respondent argues that 45 properly scheduled hours per week would meet the petitioner's need. This would include not using the hours in a consecutive block of hours. Rather, several shorter shifts throughout the day and evening should be implemented.

16. Respondent asserts placement in an assisted living or skilled nursing facility has been offered. Petitioner's representative declined this type of care.

CONCLUSIONS OF LAW

17. By agreement between the Agency for Health Care Administration (AHCA) and the Department of Children and Families, AHCA has conveyed jurisdiction to the Office of Appeal Hearings to conduct this hearing pursuant to § 120.80, Fla. Stat.

18. This hearing was held as a *de novo* proceeding pursuant to Fla. Admin. Code R. 65-2.056.

19. The standard of proof in an administrative hearing is by a preponderance of the evidence. The preponderance of the evidence standard requires proof by “the greater weight of the evidence,” (Black’s Law Dictionary at 1201, 7th Ed.).

20. Florida Statute § 409.978 states:

(1) ... the agency shall administer the long-term care managed care program ...

(2) The agency shall make payments for long-term care, including home and community-based services, using a managed care model.

21. Humana/American Eldercare is the managed care entity providing petitioner’s LTMC services.

22. Regarding the LTMC Program, Humana/American Eldercare and the respondent entered into a contractual relationship. The contract defines required services.

23. Florida Medicaid, which includes the LTMC Program, only covers those services determined to be medically necessary. See § 409.905 (4) (c), Fla. Stat.

24. The definition of medical necessity is found in Fla. Admin Code. R. 59G-1.010 and states:

(166) ‘Medically necessary’ or ‘medical necessity’ means that the medical or allied care, goods, or services furnished or ordered must:

(a) Meet the following conditions:

1. Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain;
2. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs;
3. Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational;
4. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available; statewide; and
5. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider...

...

(c) The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

25. Analysis is first directed to petitioner's request for additional respite and PCS.

Respondent's contract with Humana/American Eldercare provides the following definitions:

(21) Respite Care — Services provided to enrollees unable to care for themselves furnished on a short-term basis due to the absence or need for relief of persons normally providing the care. Respite care does not substitute for the care usually provided by a registered nurse, a licensed practical nurse or a therapist. Respite care is provided in the home/place of residence, Medicaid licensed hospital, nursing facility or assisted living facility.

(19) Personal Care — A service that provides assistance with eating, bathing, dressing, personal hygiene, and other activities of daily living. This service includes assistance with preparation of meals, but does not include the cost of the meals. This service may also include housekeeping chores such as bed making, dusting and vacuuming, which are incidental to the care furnished or are essential to the health and welfare of the enrollee, rather than the enrollee's family.

26. Petitioner is approved for 36 hours per week of respite and 9 hours per week of

PCS. This equates to 45 services hours each week.

27. A respite provider assists an individual not able to care for themselves. As such, petitioner's personal care needs can be addressed by both respite and PCS providers.

28. Petitioner's need for both supervision and personal care is not disputed. The combined 45 hours for PCS and respite, however, are currently used in nine hour blocks; Monday through Friday. Compelling evidence was not presented that utilizing the 45 hours in multiple daily blocks during the course of seven days would jeopardize petitioner's health status.

29. Petitioner did not demonstrate that additional PCS and respite services are medically necessary.

30. Analysis is next directed to the new services categories requested by the petitioner. The contract provides the following definitions:

(11) Homemaker Services — General household activities such as meal preparation and routine household care provided by a trained homemaker when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities. Chore services, including heavy chore services and pest control may be included in this service.

(1) Adult Companion Care¹ – Non-medical care, supervision and socialization provided to a functionally impaired adult. Companions assist or supervise the enrollee with tasks such as meal preparation or laundry and shopping, but do not perform these activities as discreet services. The provision of companion services does not entail hands-on nursing care. The service includes light housekeeping tasks incidental to the care and supervision of the enrollee.

31. It is noted that the definition for PCS also identifies homemaker duties as a component of that service. A respite provider can also address meal preparation.

¹ Companion definition was found at: http://ahca.myflorida.com/medicaid/statewide_mc/plans.shtml

32. Evidence was not presented why those duties to be performed by a homemaker are not already being met by the respite and PCS providers.

33. Petitioner has not established that two hours a week of homemaker services are medically necessary.

34. Regarding companion services, petitioner's representative requested 24.5 hours each week. It is not clear when these hours would be utilized and for what purpose. Regardless, the current PCS and respite are able to address socialization needs. They are with the petitioner 45 hours per week. It was not demonstrated that personal interchanges could not take place during those timeframes.

35. Petitioner has not established that 24.5 hours per week of companion services is medically necessary.

36. Petitioner has not established that an increase in PCS and respite and adding homemaker and companion services have satisfied the following conditions of medical necessity:

2. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs;

3. Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational;

5. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider...

37. Petitioner has not demonstrated, by the greater weight of the evidence, that respondent's actions in this matter were improper.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, petitioner's appeal is denied.

NOTICE OF RIGHT TO APPEAL

This decision is final and binding on the part of the agency. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Agency for Health Care Administration, 2727 Mahan Drive, Tallahassee, FL 32308-5403. The petitioner must also file another copy of the "Notice of Appeal" with the appropriate District Court of Appeal. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The petitioner must either pay the court fees required by law or seek an order of indigency to waive those fees. The petitioner is responsible for any financial obligations incurred as the agency has no funds to assist in this review.

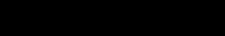
DONE and ORDERED this 14 day of January, 2016,

in Tallahassee, Florida.

Frank Houston

Frank Houston
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal.Hearings@myflfamilies.com

Copies Furnished To:

 Petitioner
Judy Jacobs, Area 7, AHCA Field Office